

May 24, 2001

Mr. Marcus A. Martin
1630 30th Street
Suite 598
Boulder, CO 80301

Re: Tar Creek Superfund Site Operable Unit 4, Ottawa County, OK; Scope of the RI/FS (Good-faith offer due in ten working days)

Dear Mr. Martin:

The purpose of this letter is to respond to the request that ASARCO Inc., Blue Tee Corporation, Childress Royalty Company, Inc., The Doe Run Resources Corporation, Gold Fields Mining Corporation, and NL Industries, Inc. (hereinafter the Mining Companies) made at our meeting on January 31, 2000. At that meeting the Mining Companies requested that the U.S. Environmental Protection Agency (EPA) more specifically define the scope of the Remedial Investigation and Feasibility Study (RI/FS) for Operable Unit 4 of the Tar Creek Superfund Site (the "Site"), and EPA agreed to do so. Towards this end, EPA representatives have met with Oklahoma Department of Environmental Quality (ODEQ) representatives, and with members of the Quapaw Tribe of Oklahoma to discuss their views of what the scope of the RI/FS should be. EPA representatives have also met with a representative of an engineering consulting firm under contract with the Mining Companies to discuss the possible use, in the RI/FS, of data gathered by the Mining Companies at mining sites in the Kansas and Missouri portions of the Tri-State mining district. The Mining Companies also requested that the following projects be considered to be separate from the scope of OU 4: 1) "Beaver Creek Passive Treatment Treatability Study" being performed by the University of Oklahoma (under contract with the U.S. Army Corps of Engineers [USACE]); and 2) "Beaver Creek RI/FS" and "RI/FS Tribal Pilot Project for the Cardin Properties" being performed by the Quapaw Tribe of Oklahoma and the Inter-Tribal Environmental Council (ITEC) (hereinafter these projects are referred to as the Beaver Creek and Cardin Projects, or the Projects).

After considering this various input, EPA has added language to the Draft Statement of Work (SOW) that originally accompanied our December 19, 2000, Special Notice letter addressed to the Mining Companies and to the U.S. Department of the Interior (DOI). This new

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SOW language defines the scope of the RI/FS, and addresses other issues raised by ODEQ, by the Quapaw Tribe, and by the Mining Companies, including without limitation the use of data gathered in the Kansas and Missouri portions of the mining district. The new language has been added to the SOW in "redline and strikeout" text, and a copy of this revised SOW (Enclosure A) is enclosed. Additionally, due to the fact that some of the contamination in question is located in residential areas near cities, EPA has dropped "Rural" from the name of the operable unit that will be the subject of the RI/FS. The operable unit will now be referred to as Operable Unit 4 or OU4.

As stated in EPA's "Interim Policy on the Use of Permanent Relocations as Part of Superfund" (December 14, 1998; the "Interim Relocation Policy"), EPA's preference is to clean up and restore property so people can stay in their homes. As also mentioned in the Interim Relocation Policy, EPA has successfully removed contaminated soil from approximately 1,542 residential properties within the Site, thereby keeping the community intact by implementing technology-based solutions that reduced risks to acceptable levels so that people could remain in their homes. Accordingly, based on the success of our technology-based solutions, as described in the Interim Relocation Policy, EPA does not believe that relocation should be considered as a viable option for OU 4, or for the Site in general. The "redline" language that EPA has added to the Draft SOW reflects this belief.

With respect to the Beaver Creek and the Cardin Projects, it is EPA's intention to incorporate the information gathered from those Projects into the RI/FS for OU 4. The alternative would be to treat the Projects as part of another operable unit which would require yet another Record of Decision, another separate Remedial Design and so on. We hope you can see that this would be inefficient. Accordingly, it is our hope that counsel for the Mining Companies and DOI would take stock of the evidence linking their respective clients to the areas addressed by the Projects and apportion responsibility for payment of past costs associated with the Projects among the Potentially Responsible Parties (PRPs) as appropriate, without the involvement of EPA, except as an information resource.¹ That is, it is our hope that the Mining Companies and DOI will meet to discuss their respective responsibilities for all OU 4 costs, including without limitation the past costs associated with the Projects, and that the Mining Companies and DOI will make a coordinated settlement offer to EPA.

As we said in a letter to you, EPA now requests that you provide us with a good-faith offer to perform the RI/FS within ten working days of your receipt of this letter. If you have any

¹For example, to facilitate negotiations among the PRPs, EPA should be able to identify which of the past costs, for which payment has been requested, are associated with the Beaver Creek and Cardin Projects.

questions, please call me at (214) 665-8045. Thank you for your cooperation in this matter. We look forward to working with you in the future.

Sincerely yours,


James E. Costello
Senior Attorney (6RC-S)

Enclosure

cc: Tabitha Worley (Environmental Program Director)
Quapaw Tribe of Oklahoma (w/enclosure)

Scott Thompson (Director, Land Protection Division)
Oklahoma Department of Environmental Quality (w/enclosure)

Scott J. Jordan (Senior Attorney)
U.S. Department of Justice (w/enclosure)

Gary D. Uphoff (Principal)
Environmental Management Services Company (w/enclosure)

Kelly Hunter-Burch (Office of Attorney General)
State of Oklahoma (w/enclosure)